

103^D CONGRESS
1ST SESSION

S. 936

To amend title XVIII of the Social Security Act to eliminate the annual cap on the amount of payment for outpatient physical therapy and occupational therapy services under part B of the medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day April 19), 1993

Mr. CHAFEE (for himself, Mr. SIMON, and Mr. SHELBY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to eliminate the annual cap on the amount of payment for outpatient physical therapy and occupational therapy services under part B of the medicare program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ELIMINATION OF ANNUAL CAP ON AMOUNT OF**
2 **MEDICARE PAYMENT FOR OUTPATIENT**
3 **PHYSICAL THERAPY AND OCCUPATIONAL**
4 **THERAPY SERVICES.**

5 (a) IN GENERAL.—Section 1833 of the Social Secu-
6 rity Act (42 U.S.C. 1395l) is amended by repealing sub-
7 section (g).

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to services furnished on or after
10 January 1, 1994.

11 **SEC. 2. EXTRA-BILLING LIMITS.**

12 (a) ENFORCEMENT AND UNIFORM APPLICATION.—

13 (1) ENFORCEMENT.—Paragraph (1) of section
14 1848(g) of the Social Security Act (42 U.S.C.
15 1395w-4(g)) is amended to read as follows:

16 “(1) LIMITATION ON ACTUAL CHARGES.—

17 “(A) IN GENERAL.—In the case of a
18 nonparticipating physician or nonparticipating
19 supplier or other person (as defined in section
20 1842(i)(2)) who does not accept payment on an
21 assignment-related basis with respect to a phy-
22 sician’s service furnished to an individual en-
23 rolled under this part, the following rules apply:

24 “(i) APPLICATION OF LIMITING
25 CHARGE.—No such physician, supplier, or
26 person may bill or collect an actual charge

1 for the service in excess of the limiting
2 charge described in paragraph (2) for such
3 service.

4 “(ii) NO LIABILITY FOR EXCESS
5 CHARGES.—No person is liable for pay-
6 ment of any amounts billed for the service
7 in excess of such limiting charge.

8 “(iii) CORRECTION OF EXCESS
9 CHARGES.—If such a physician, supplier,
10 or other person bills, but does not collect,
11 an actual charge for a service in violation
12 of clause (i), the physician, supplier, or
13 other person shall reduce on a timely basis
14 the actual charge billed for the service to
15 an amount not to exceed the limiting
16 charge for the service.

17 “(iv) REFUND OF EXCESS COLLEC-
18 TIONS.—If such a physician, supplier, or
19 other person collects an actual charge for
20 a service in violation of clause (i), the phy-
21 sician, supplier, or other person shall pro-
22 vide on a timely basis a refund to the indi-
23 vidual charged in the amount by which the
24 amount collected exceeded the limiting
25 charge for the service. The amount of such

1 a refund shall be reduced to the extent the
2 individual has an outstanding balance owed
3 by the individual to the physician, supplier,
4 or other person.

5 “(B) SANCTIONS.—If a physician, supplier,
6 or other person—

7 “(i) knowingly and willfully bills or
8 collects for services in violation of subpara-
9 graph (A)(i) on a repeated basis, or

10 “(ii) fails to comply with clause (iii)
11 or (iv) of subparagraph (A) on a timely
12 basis,

13 the Secretary may apply sanctions against the
14 physician, supplier, or other person in accord-
15 ance with paragraph (2) of section 1842(j). The
16 provisions of section 1842(j)(4) shall apply for
17 purposes of this paragraph except that any ref-
18 erence in such section to a physician is deemed
19 also to include a reference to a supplier or other
20 person under this subparagraph.

21 “(C) TIMELY BASIS.—For purposes of this
22 paragraph, the term ‘on a timely basis’, means
23 not later than 30 days after the date the physi-
24 cian, supplier, or other person is notified by the

1 carrier under this part of a violation of the re-
2 quirements of subparagraph (A).”.

3 (2) UNIFORM APPLICATION OF EXTRA-BILLING
4 LIMITS TO PHYSICIANS’ SERVICES.—

5 (A) IN GENERAL.—Section 1848(g)(2)(C)
6 of the Social Security Act (42 U.S.C. 1395w-
7 4(g)(2)(C)) is amended by inserting “or for
8 nonparticipating suppliers or other persons”
9 after “nonparticipating physicians”.

10 (B) CONFORMING DEFINITION.—Section
11 1842(i)(2) of the Social Security Act (42
12 U.S.C. 1395u(i)(2)) is amended—

13 (i) by striking “, and the term” and
14 inserting “; the term”, and

15 (ii) by inserting before the period at
16 the end the following: “; and the term
17 ‘nonparticipating supplier or other person’
18 means a supplier or other person (exclud-
19 ing a provider of services) that is not a
20 participating physician or supplier (as de-
21 fined in subsection (h)(1))”.

22 (3) ADDITIONAL CONFORMING AMENDMENTS.—
23 Section 1848 of the Social Security Act (42 U.S.C.
24 1395w-4) is amended—

25 (A) in subsection (a)(3)—

1 (i) by inserting “AND SUPPLIERS”
2 after “PHYSICIANS”,

3 (ii) by inserting “or a
4 nonparticipating supplier or other person
5 (as defined in section 1842(i)(2))” after
6 “nonparticipating physician”, and

7 (iii) by adding at the end the follow-
8 ing: “In the case of physicians’ services
9 (including services which the Secretary ex-
10 cludes pursuant to subsection (j)(3)) of a
11 nonparticipating physician, supplier, or
12 other person for which payment is made
13 under this part on a basis other than the
14 fee schedule amount, the payment shall be
15 based on 95 percent of the payment basis
16 for services of such type which are fur-
17 nished by a participating physician, sup-
18 plier, or other person.”;

19 (B) in subsection (g)(1)(A), as amended by
20 subsection (a), in the matter before clause (i),
21 by inserting “(including services which the Sec-
22 retary excludes pursuant to subsection (j)(3))”
23 after “a physician’s service”;

24 (C) in subsection (g)(2)(D), by inserting
25 “(or, if payment under this part is made on a

1 basis other than the fee schedule under this sec-
2 tion, 95 percent of the other payment basis)”
3 after “subsection (a)”;

4 (D) in subsection (g)(3)(B)—

5 (i) by inserting after the first sentence
6 the following: “No person is liable for pay-
7 ment of any amounts billed for such a
8 service in violation of the previous sen-
9 tence.”, and

10 (ii) in the last sentence, by striking
11 “previous sentence” and inserting “first
12 sentence”; and

13 (E) in subsection (h)—

14 (i) by inserting “or nonparticipating
15 supplier or other person” after “physician”
16 the first place it appears,

17 (ii) by inserting “, supplier, or other
18 person” after “physician” the second place
19 it appears, and

20 (iii) by inserting “, suppliers, and
21 other persons” after “physicians” the sec-
22 ond place it appears.

23 (b) INFORMATION ON EXTRA-BILLING LIMITS.—

1 (1) PART OF EXPLANATION OF MEDICARE BEN-
2 EFITS.—Section 1842(h)(7) of the Social Security
3 Act (42 U.S.C. 1395u(h)(7)) is amended—

4 (A) by striking “and” at the end of sub-
5 paragraph (B);

6 (B) in subparagraph (C), by striking “shall
7 include” and by striking the period at the end
8 and inserting “, and”; and

9 (C) by adding at the end the following new
10 subparagraph:

11 “(D) in the case of services for which the billed
12 amount exceeds the limiting charge imposed under
13 section 1848(g), information regarding such limiting
14 charge (including information concerning the right
15 to a refund under section 1848(g)(1)(A)(iv)).”.

16 (2) DETERMINATIONS BY CARRIERS.—Subpara-
17 graph (G) of section 1842(b)(3) of the Social Secu-
18 rity Act (42 U.S.C. 1395u(b)(3)) is amended to read
19 as follows:

20 “(G) for a service that is furnished with respect
21 to an individual enrolled under this part, that is not
22 paid on an assignment-related basis, and that is sub-
23 ject to a limiting charge under section 1848(g),
24 will—

1 “(i) determine, prior to making payment,
2 whether the amount billed for such service ex-
3 ceeds the limiting charge applicable under sec-
4 tion 1848(g)(2);

5 “(ii) notify the physician, supplier, or other
6 person periodically (but not less often than once
7 every 30 days) of determinations that amounts
8 billed exceeded such limiting charges; and

9 “(iii) provide for prompt response to in-
10 quiries of physicians, suppliers, and other per-
11 sons concerning the accuracy of such limiting
12 charges for their services;”.

13 (c) REPORT ON CHARGES IN EXCESS OF LIMITING
14 CHARGE.—Section 1848(g)(6)(B) of the Social Security
15 Act (42 U.S.C. 1395w-4(g)(6)(B)) is amended by insert-
16 ing “on the extent to which actual charges exceed limiting
17 charges, the number and types of services involved, and
18 the average amount of excess charges and” after “report
19 to the Congress”.

20 (d) EFFECTIVE DATES.—

21 (1) ENFORCEMENT AND UNIFORM APPLICA-
22 TION.—The amendments made by subsection (a)
23 shall apply to services furnished on or after January
24 1, 1994.

1 (2) EXPLANATIONS.—The amendments made
2 by subsection (b)(1) shall apply to explanations of
3 benefits provided on or after January 1, 1994, ex-
4 cept that the requirement for including information
5 concerning the right to a refund shall apply to expla-
6 nations of benefits provided on or after July 1,
7 1994.

8 (3) CARRIER DETERMINATIONS.—The amend-
9 ments made by subsection (b)(2) shall apply to con-
10 tracts as of January 1, 1994.

11 (4) REPORT.—The amendment made by sub-
12 section (c) shall apply to reports for years beginning
13 after 1994.

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